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Nos. 07-21 & 07-25

In the Supreme Court of the United States

WILLIAM CRAWFORD, ET AL.,
Petitioners,
v.
MARION COUNTY ELECTION BOARD, ET AL.,
Respondents.

INDIANA DEMOCRATIC PARTY, ET AL.,
Petitioners,
v.
TODD ROKITA, ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF OF TEXAS, ALABAMA, COLORADO, FLORIDA, HAWAII, MICHIGAN, NEBRASKA, PUERTO RICO, AND SOUTH DAKOTA AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici States have a compelling interest in safeguarding the integrity of democratic elections. *Eu* v. *San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). All 50 States, the District of Columbia, and Puerto Rico have enacted laws concerning voter qualifications, ballot security, and voter fraud. Indiana's photo-ID statute reflects that tradition, ensuring that every qualified voter's vote counts and that those votes are not diluted by illegal votes cast by others.

Voter fraud undermines respect for democracy and public confidence in the electoral process. *Amici* States have a strong interest—indeed, an obligation—to combat voter fraud and to protect the fundamental right to vote for every citizen.

SUMMARY OF THE ARGUMENT

Voter fraud is a serious concern, and Congress and every State in the Union have legislated to address it. The bipartisan Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James Baker, expressly urged that States require photo IDs for voting, and several States, including Indiana, have followed that recommendation.

Requiring a photo ID to vote serves important government interests. It protects the integrity of elections, promotes confidence in the democratic process, and avoids diluting the votes of legal voters. And the burden on voters is slight. In our modern age, photo IDs are required for the most mundane activities, from driving a car to entering a government building to renting a DVD. As recommended by the Carter-Baker Commission, Indiana has provided photo IDs *without cost*, and so the burden of securing one is minimal.

Under longstanding precedent, the States have substantial leeway to balance competing policy interests, and Indiana has implemented a commonsense measure to prevent fraud in democratic elections. Nothing in the Constitution prohibits this law.

ARGUMENT

I. VOTER FRAUD IS A SERIOUS CONCERN.

The foundation of Petitioners' challenge is the notion that voter fraud, and in particular in-person voter fraud, is not a very serious problem. They urge that "the record is . . . bereft of evidence suggesting any fraud problem," and that Indiana in particular lacks "any reasonable basis to suspect that such fraud is a risk in Indiana." Pet'r Br. (07-021), at 46-47, 54. Petitioners are incorrect.

At the most general level, the falsity of Petitioners' position is easily demonstrated. Voter fraud is a serious problem. Just last Term, the Court explained,

> "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. *Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.* Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. '[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Purcell* v. *Gonzalez*, 127 S.Ct. 5, 7 (2006) (per curiam) (emphasis added) (quoting *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964)).

Indeed, the threat of voter fraud is sufficiently pronounced that the Carter-Baker Commission was

convened to carefully study the issues and to make recommendations. That Commission, in turn, issued a final report in 2005 entitled "*Building Confidence in U.S. Elections.*" The bipartisan report began,

> "[e]lections are at the heart of democracy . . . . *Americans are losing confidence in the fairness of elections*, and while we do not face a crisis today, we need to address the problems of our electoral system . . . ." REPORT OF NAT'L COMM'N ON FED. ELECTION REFORM: BUILDING CONFIDENCE IN U.S. ELECTIONS, at ii (2005) [CARTER-BAKER COMM'N REP.].

A. The History of Our Nation Demonstrates the Ongoing Threat of Voter Fraud.

From New York's Tammany Hall to the Kansas City Pendergast machine, from Alice, Texas and the 1948 Senate race between Lyndon B. Johnson and Coke Stevenson to Mayor Richard Daley's Chicago machine in the 1960 presidential race, the specter of voter fraud has threatened the integrity of the electoral process for the entire history of our Nation. And that threat continues to this day. *See, e.g.*, TRACY CAMPBELL, DELIVER THE VOTE: A HISTORY OF ELECTION FRAUD, AN AMERICAN POLITICAL TRADITION—1742-2004, at xvi-xvii (2005) [CAMPBELL, ELECTION FRAUD] (noting that the American political process has been "deeply corrupted . . . for over two hundred years" and that voting fraud "is a deeply embedded culture within American politics that considers cheating fully justifiable"); LARRY J. SABATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS 276 (1996) ("Our nation has a long and depressing history as a happy haven for the vote thief."); Steven F. Huefner, *Remedying*

Election Wrongs, 44 HARV. J. ON LEGIS. 265, 271 (2007) ("Voting fraud of course is a long-standing plague on democratic elections.").

Recent notorious instances of alleged voting fraud include the 1996 Dornan-Sanchez congressional race for California's 46th District, in which investigators turned up evidence of at least 784 illegal votes cast by noncitizens, *see* Hearing on Non-Citizen Voting Before the Comm. on House Admin., 109th Cong. 2 (2006) (testimony of Dan Stein); the 2000 Miami mayor's race between Joe Carollo and Xavier Suarez involving tainted absentee ballots, CAMPBELL, ELECTION FRAUD, at 286-91; and the 2004 Washington gubernatorial race, where a state judge determined that 1,678 votes had been illegally cast, *see* CARTER-BAKER COMM'N REP., at 4. In addition, since October 2002 the U.S. Department of Justice has launched more than 180 investigations into election fraud that have resulted in charges against 89 individuals and 52 convictions. *Id.*, at 45. These events serve as sad reminders that voting fraud is a real and persistent part of American politics and that, even assuming that voting fraud is not as widespread as it was in decades past, it can still affect the outcome of a close election. *Id.*, at 18.

Petitioners' claim that voting fraud is largely chimerical is belied by the facts. For example, for decades, the State of Texas has grappled with the challenges of voting fraud. Lyndon B. Johnson's 1946 Senate campaign is only the most infamous instance, but serious allegations of voter fraud have persisted, especially in South Texas, for more than a century.

Over the past five years, the Texas Attorney General's Office has vigorously enforced the voter-fraud laws, and

has obtained numerous indictments, guilty pleas, and convictions. In one case, a city councilwoman was convicted and sentenced to five years in prison for registering noncitizens to vote and then facilitating noncitizen voting by tampering with government documents. *See Former Port Lavaca Councilwoman Briseno to Serve Five Years in Prison for Voter Fraud*, June 25, 2007, http://www.freerepublic.com/focus/f-news/1856131/posts. Another instance of voter fraud involved allegations that a woman escorted voters into polling sites and illegally marked ballots without their consent. *See* Mary Ann Cavazos, *Robstown Woman Indicted and Jailed in Voter-Fraud Case*, CALLER-TIMES, June 16, 2006, http://www.caller.com/ccct/local_news/article/0,1641,CCCT_811_4779588,00.html. In yet another case, a man was indicted for double voting in the November 2006 general election. *See Five Rio Grande Valley Residents Indicted for Voter Fraud Allegedly from 2006 Election Cycle*, June 1, 2007, http://www.edinburgpolitics.com/?p=82. There was also a Refugio County Commissioner who pled guilty to the felony of tampering with government documents during a primary election, an East Texas former State Senator who was indicted for official oppression in trying to keep two candidates for a water board off the ballot, and a Beeville, Texas resident who pleaded guilty to casting ballots for her deceased mother. And many more instances of voting fraud relating to the illegal possession, handling, and transport of mail-in ballots have occurred. *See, e.g., Refugio County Commissioner Pleads Guilty to Election Fraud Scheme*, Oct. 9, 2007, http://www.setexasrecord.com/news/202316-refugio-county-commissioner-pleads-guilty-to-election-fraud-scheme; *Nueces County Indictment in Voter Fraud Investigation*, ASSOC. PRESS, Jan. 19, 2007, http://www.kristv.com/

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B. Voter Impersonation at the Polls Is Likewise a Serious Threat to the Integrity of Our Electoral Process.

Petitioners could be heard to answer, no doubt, that while voter fraud writ large might perhaps be a problem, the specific problem of fraudulent voting at the polls—which photo-ID laws seek to prevent—is not at all significant. Again, Petitioners are incorrect.

Although the precise magnitude of voter-impersonation fraud has been disputed, "there is no doubt that it occurs." *See* CARTER-BAKER COMM'N REP., at 18. For example, witnesses who testified during the last Regular Session of the Texas Legislature on proposed photo-ID legislation reported that voter impersonation, in which people's IDs or voter-registration cards have been stolen and false votes had been cast in those persons' names, is not uncommon. *See* A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before the House Comm. on Elections, 80th Leg., R.S. (Feb. 28, 2007), http://www.house.state.tx.us/committees/broadcasts.php?session=80&committeeCode=240 (testimony of Ed Johnson of the Harris County Tax Office); *id.*, Hearing on Tex. H.B. 218 Before S. Comm. on State Affairs, 80th Leg., R.S. (Apr. 30, 2007), http://www.senate.state.tx.us/avarchive/?yr=2007&lim=200 (testimony of Skipper Wallace, State Legislative

Chairman for the Republican County Chairmans Association).

In Harris County, for example, there was an instance in which one candidate in a primary election registered hundreds of voters, changed their addresses, and then voted for them on election day. *See* A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before the House Comm. on Elections, 80th Leg., R.S. (Feb. 28, 2007), http://www.house.state.tx.us/committees/broadcasts.php?session=80&committeeCode=240 (testimony of Ed Johnson). There have also been reports of stolen voter-registration cards, *see id.* (testimony of Skipper Wallace), a crime that makes sense only if one is intending to impersonate legal voters.

Other examples abound. Consider the case of Michael Zore who voted twice in 2006 by going to the polling stations of two Milwaukee, Wisconsin suburbs in the space of six hours. His excuse: "I forgot." The evidence against him, however, showed that he signed up to vote using a false address from one precinct when he already voted in another precinct. Derrick Nunnally, *Man Covicted of Double Voting: "I Forgot" Dosen't Get Toas Resident Off Hook*, MILWAUKEE J. SENTINEL, Aug. 22, 2007, http://www.jsonline.com/story/index.aspx?id=651215.

Another double voter was James Scherzer, an attorney, who cast two ballots in the same election several times in 2000 and 2002; he did this by voting in Kansas and then crossing the state line and voting again in Missouri. Mr. Scherzer acknowledged, "I was wrong in what I did." Greg Reeves, *One Person, One Vote? Not Always*, KANSAS CITY STAR, Sept. 5, 2004, http://www.angelfire.com/pa/sergeman/

issues/elections/onevote.html. And his case was but one of dozens of potential double-voting cases in Kansas City. *Id.*

Besides double voting, dead people casting votes is not an uncommon type of voting fraud. For example in the 2000 election, André Alismé, who died of cancer in 1997, had a ballot cast in his name in the presidential election. Manny Garcia & Tom Dubocq, *Unregistered Voters Cast Ballots in Dade: Dead Man's Vote, Scores of Others Were Allowed Illegally, Herald Finds*, MIAMI HERALD, Dec. 24, 2000, http://www.englishfirst.org/ballots/deadvote.htm. A November 2000 Atlanta Journal-Constitution report showed that between 1980 and 2000, there were more than 5,000 documented cases of people voting in Georgia after their deaths. Frank B. Strickland & Anne W. Lewis, *It's About Fraud, Not Jim Crow*, WASH. POST, Aug. 30, 2005, at A17. And in South Texas, as one local government watchdog stated, it is well known that "[d]own here, we have dead people vote," referring to the fraudulent practice of using dead voters' registration cards to cast extra ballots. Moreover, voter registration cards have been issued to imaginary voters and then distributed to real people who were not registered. Sara Perkins, *Valley Officials, Observers at Odds Over Need for New Voter ID Laws*, THE MONITOR, Apr. 24, 2007, http://www.themonitor.com/common/printer/view.php?db=monitortx&id=1855.

At the end of the day, there is considerable national evidence of in-person voter fraud. And, regardless of whether one believes that voter impersonation is widespread or relatively rare, there can be no serious dispute that its real effect can be substantial because, in a close election, even a small amount of fraud could make

the margin of difference. CARTER-BAKER COMM'N REP., at 18.

C. Congress and All 50 States Have Legislated to Prohibit and Prevent Voter Fraud.

Congress and all 50 States, the District of Columbia, and Puerto Rico have enacted some form of voter-ID law. Collectively, these laws provide a continuum of regulatory responses to polling-place fraud and ballot security.

At the federal level, the Help America Vote Act of 2002 (HAVA), Pub. L. 107-252, 116 Stat. 1666 (codified at 42 U.S.C. §15301, *et seq.*), mandated that all States require photo ID, or in lieu of a photo ID some other form of approved nonphotograhic ID, from first-time voters who registered to vote by mail and did not provide verification of their identity with their mail-in registration. *See* 42 U.S.C. §15483(b). Congress explicitly provided, however, that this requirement was only a "minimum requirement[]," that States could establish "requirements that are more strict," and that States have "discretion" in implementing HAVA's requirements. *Id.* §§15484, 15485.

Even after HAVA, the Commission on Federal Election Reform expressly found that"[t]he electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." CARTER-BAKER COMM'N REP., at 18. Pursuant to that finding, the Carter-Baker Commission explicitly recommended as follows:

> "[T]o make sure that a person arriving at a polling site is the same one who is named on the lists, *we propose a uniform system of voter identification* based on the 'REAL ID card' or an equivalent for people without a drivers license." *Id.*, at iv (emphasis added).

Consistent with both the federal mandate of HAVA and with the recommendation of the Carter-Baker Commission, the Indiana Legislature has chosen to require a valid photo ID at the ballot box.[1] Similarly, both Georgia and Missouri have enacted laws that strictly enforce a photo-ID requirement.[2] All of these laws allow a voter without ID to nonetheless cast a provisional ballot, but then count that provisional ballot only if either the voter's signature on file with the election authority can be verified or if the voter presents a valid photo ID to election officials within the time period for verifying provisional ballots.[3] Florida likewise requires all in-person voters to present a "current and valid picture identification."[4] And, like Indiana, Georgia, and Missouri, Florida allows a voter without photo ID to cast a provisional ballot, and that ballot will be counted only if the voter's signature on the provisional-ballot certification and affirmation matches the signature on the voter's registration or if written evidence confirms the voter's identity.[5]

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1. *See* IND. CODE ANN. §§3-5-2-40.5, & 3-11-8-25.1(a).

2. *See* GA. CODE ANN. §§21-2-417, & 21-2-417.1; MO. ANN. STAT. §115.427. In 2006, the Missouri Supreme Court declared §115.427's photo-ID requirement to be invalid under that State's constitution. *See Weinschenk* v. *State*, 203 S.W.3d 201, 204, 221-22 (Mo. 2006). Recently, the United States District Court for the Northern District of Georgia upheld Georgia's photo-ID requirement, finding that the plaintiffs did "not demonstrate[] that the Photo ID requirement place[d] an undue or significant burden on the right to vote" and that the Plaintiffs' equal-protection challenge was meritless. *See Common Cause/Georgia* v. *Billups*, 504 F.Supp.2d 1333, 1382 (N.D. Ga. 2007).

3. *See* GA. CODE ANN. §21-2-417(b); IND. CODE ANN. §§3-11-8-25.1(d), & 3-11.7-5-2.5; MO. ANN. STAT. §115.427(5).

4. *See* FLA. STAT. ANN. §§97.0535, 101.043.

5. *See id.* §101.048.

At the other end of the continuum are jurisdictions that have currently chosen to require less rigorous measures for ballot security. These jurisdictions include Arkansas, California, the District of Columbia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. Collectively, these States employ an array of voter-ID laws, including: (i) relying on an honor system of announcing one's identity and matching the person's name on the registration list,[6] (ii) requiring compliance with HAVA's minimum identification standards for first-time voters who registered by mail,[7] (iii) requesting but not requiring that a person provide photo or written ID,[8] (iv) asking for ID and a written affirmation of identity if a person does not

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6. *See, e.g.*, NEB. REV. STAT. ANN. §32-914(2)(a)-(b); N.H. REV. STAT. ANN. §659:13; N.Y. ELEC. LAW §8-302(2); VT. STAT. ANN. tit. 17, §2563.

7. *See, e.g.*, CAL. CODE REGS. tit. 2, §20107; D.C. CODE §1-1001.7(i)(6); IDAHO CODE §34-410; 10 ILL. COMP. STAT. ANN. 5/4-105; MISS. CODE ANN. §23-15-169.5; 21-000-021 MISS. CODE R. §§1-13; NEB. REV. STAT. ANN. §32-914(2)(c); NEV. REV. STAT. ANN. §293.2725(1)(a); N.J. STAT. ANN. §19:15-17(b); N.Y. ELEC. LAW §§8-302(2-a), & 8-303(1)-(2)(a)(1); N.Y. COMP. CODES R. & REGS. tit. 9, §6217.6(k); N.C. GEN. STAT. §163-166.12(a); OKLA. STAT. ANN. tit. 26, §7-115.2; OKLA. ADMIN. CODE §230:35-5-113.3; R.I. GEN. LAWS §17-20-6.2; VT. STAT. ANN. tit. 17, §2563; W. VA. CODE ANN. §3-2-10(g); WIS. STAT. ANN. §6.34(2)-(3); WYO. STAT. ANN. §22-3-118(b).

8. *See* ARK. CODE ANN §7-5-305(a); 108-00-009 ARK. CODE R. §901 (Ar. State Bd. Election Comm'rs); HAW. REV. STAT. ANN. §11-136; MASS. GEN. LAWS ANN. ch.54, §76B(a); 950 MASS. CODE REGS. 52.03(5B).

appear on the election register,[9] (v) asking for ID and an attestation of identity if a person's identity is challenged,[10] (vi) requiring a person to sign an oath if their identity is challenged,[11] (vii) requiring a person to sign a poll book,[12] (viii) allowing a person without ID to vote if the voter provides his or her birth date and if a member of the election board or a clerk vouches for the individual,[13] or (ix) allowing a person without photo ID to vote, subject to challenge, if the voter executes an affidavit swearing to his or her identity.[14]

Between the two ends of the ballot-security continuum lie the voter-ID laws of Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Kansas, Kentucky, Montana, New Mexico, Ohio, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington. These laws do not employ the same rigor as a strict photo-ID requirement, but they incorporate more numerous and greater ballot-security controls than other States. For instance, several States take an intermediate approach that requires all persons to present either photographic ID, written ID, or another form of unique

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9. *See* IOWA CODE ANN. §49.77(4)(a); ME. REV. STAT. ANN. tit. 21-A, §121(1-A); MINN. STAT. ANN. §201.061(3); MINN. R. 8200.5500; N.H. REV. STAT. ANN. §§654:7-a(II), 654:12(III), 659:13.

10. *See* MD. CODE ANN., ELEC. LAW §10-312.

11. *See, e.g.*, CAL. ELEC. CODE §14243; D.C. CODE §1-1001.7(i)(1), (3); IOWA CODE ANN. §49.77(1).

12. *See* OR. REV. STAT. §254.385(1). Oregon is unique in that all elections there are conducted by mail. *See id.* §254.465. Nevertheless, "[a]t each primary election and general election, the county clerk [still must] maintain voting booths . . . ." *Id.* §254.474.

13. *See* N.D. CENT. CODE §16.1-05-07(1)-(3).

14. *See* LA. REV. STAT. ANN. §18:562(A); MICH. COMP. LAWS ANN. §168.523(1); S.D. CODIFIED LAWS §§12-18-6.1, -6.2; S.D. ADMIN. R. 5:02:05:25.

identifier before casting an in-person ballot.[15] Among these States, Arizona is unique in that it requires either one form of photo ID or *two* forms of written ID.[16] Alabama, Alaska, and Kentucky also require either photo or written ID, but the requirement will be waived if one or more election officers confirm the voter's identity.[17] Kansas and Pennsylvania require either photo ID or other written identification to cast an in-person ballot, but only for certain first-time voters.[18] Puerto Rico requires voters to present a photo ID issued by the Commonwealth's Election Commission.[19] Utah requires "valid voter identification" from an in-person voter only if it is indicated on the official register or if the poll worker does not know the voter and has reason to doubt the voter's identity.[20] And Texas requires that all in-person voters present their voter-registration cards to election officials.[21] If a voter does not have their registration card, he or she must execute an affidavit and present an accepted form of photo or written ID.[22]

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15. *See* ARIZ. REV. STAT. ANN. §16-579(A); COLO. REV. STAT. ANN. §§1-1-104(19.5), & 1-7-110(1)-(2); CONN. GEN. STAT. ANN. §9-261(a); DEL. CODE ANN. tit. 15, §4937(a); MONT. CODE ANN. §13-13-114(1)(a); MONT. ADMIN. R. 44.3.2102(6); N.M. STAT. ANN. §§1-1-24, 1-1-23, & 1-12-7.1(D); OHIO REV. CODE ANN. §3505.18(A)(1); OHIO ADMIN. CODE §111-12-03(C)(8); S.C. CODE ANN. §§7-5-620, & 7-13-710; TENN. CODE ANN. §2-7-112(a)(1), (c); VA. CODE ANN. §24.2-643(B); WASH. REV. CODE ANN. §§29A.08.113(1), & 29A.44.205.

16. *See* ARIZ. REV. STAT. ANN. §16-579(A).

17. *See* ALA. CODE §17-9-30(b), (f); ALASKA STAT. §15.15.225(a)-(b); KY. REV. STAT. ANN. §117.227.

18. *See* KAN. STAT. ANN. §25-2908(c)(4), (d), (h); 25 PA. CONS. STAT. ANN. §3050(a)-(a.1).

19. P.R. LAWS ANN. tit. 16, §§3059, 3061.

20. *See* UTAH CODE ANN. §§20A-3-104(1)(a)-(c), & 20A-3-105.5(4).

21. *See* TEX. ELEC. CODE ANN. §63.008(a).

22. *See id.* §§63.008(a), .0101.

Of course, none of these laws is static. Following the recommendation of the Carter-Baker Commission, a significant number of state legislatures are actively debating whether to require a photo ID to vote,[23] much as Indiana, Georgia, Missouri, and Florida have already done. Thus, the laws are in flux, with the legislatures of the several States vigorously fulfilling their constitutional roles as Justice Brandeis's famous laboratories to determine the precise policy prescriptions that best protect democratic integrity.

II. THE SEVENTH CIRCUIT WAS CORRECT TO APPLY THE "MORE FLEXIBLE" STANDARD OF THE "ORDINARY LITIGATION" TEST TO INDIANA'S PHOTO-ID REQUIREMENT.

In analyzing Indiana's photo-ID requirement, the Seventh Circuit refused to apply strict scrutiny and instead applied the "more flexible"[24] standard of the "ordinary litigation" test for statutes that "control the mechanics of the electoral process,"[25] as articulated in *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983), and its progeny.[26] *See Crawford* v. *Marion County Election Bd.*,

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23. *See* , *e.g.*,Ala H.B. 381, R.S. (2007); Cal. A.B. 9, R.S. (2007); Cal. S.B. 173, R.S. (2007); Ga. S. Res. 4, R.S. (2007); Ill. H.B. 3418, 95th Leg., R.S. (2007); Iowa S.F. 84, 82d Leg., R.S. (2007); Kan. S.B. 169, R.S. (2007); Md. S.B. 597, R.S. (2007); Mass. S.B. 440, 185th Leg., R.S. (2007); Minn. H.F. 121, 85th Leg., R.S. (2007); Miss. H.B. 309, 824, 920, 1386, 1388, 1408, S.B. 2038, 2121, 2256, 2617, 2700, R.S. (2007); Nev. S.B. 385, 74th Leg., R.S. (2007); N.M. H.B. 628, 48th Leg., R.S. (2007); N.C. H.B. 185, R.S. (2007); Okla. S.B. 15, 51st Leg., R.S. (2007); Tenn. H.B. 938, S.B. 227, 105th Leg., R.S. (2007); Tex. H.B. 218, 80th Leg., R.S. (2007); Wash. H.B. 1468, 60th Leg., R.S. (2007).

24. *Burdick* v. *Takushi*, 504 U.S. 428, 434 (1992).

25. *McIntyre* v. *Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995).

26. *Norman* v. *Reed*, 502 U.S. 279, 288-89 (1992); *Burdick*, 504 U.S., at 434-40; *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351,

472 F.3d 949, 952-53 (CA7 2007). The Seventh Circuit was correct to do so. It cannot be that strict scrutiny applies—as Petitioners seem to claim—whenever so much as a single voter's ability to exercise his or her fundamental right to vote is burdened. Such a rule would be inconsistent with well-established precedent of this Court.

The right to vote is of course fundamental. *Burdick* v. *Takushi*, 504 U.S. 428, 433 (1992); *Ill. State Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 184 (1979). But that right is not absolute. *Burdick*, 504 U.S., at 433; *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 193 (1986). Under the Constitution, States are expressly authorized to regulate the times, places, and manner of holding elections, U.S. CONST. art. I, §4, cl.1; *Tashjian* v. *Republican Party of Conn.*, 479 U.S. 208, 217 (1986), and, indeed, are compelled to take "an active role in structuring elections," *Burdick*, 504 U.S., at 433 (1992), to assure that the electoral process is orderly, fair, and honest. *Storer* v. *Brown*, 415 U.S. 724, 730 (1974).

All "[e]lection laws will invariably impose some burden upon individual voters." *Burdick*, 504 U.S., at 433. But there is no right to be free from any inconvenience or burden in voting. Indeed, a contrary rule would impermissibly "tie the hands of States seeking to assure elections are operated equitably and efficiently." *Id.* Thus, "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Id.*, at 441 (citing *Anderson*, 460 U.S., at 788; *Storer*, 415 U.S., at 730).

359-64 (1997); *Clingman* v. *Beaver*, 544 U.S. 581, 591-97 (2005).

In assessing a challenge to an election-law provision that regulates the electoral process, the Court's analysis focuses on "the relative interests of the State and the injured voters" and "evalute[s] the extent to which the State's interests necessitated the contested restrictions." *McIntyre*, 514 U.S., at 345. Specifically, the Court "must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Anderson*, 460 U.S., at 789. Next, the Court "must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Id.* The Court "determine[s] the legitimacy and strength of each of those interests," and "consider[s] the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* All of these factors are weighed "to decide whether the challenged provision is unconstitutional." *Id.*

When weighing the competing interests, a "'severe' restriction[]" upon the plaintiff's First and Fourteenth Amendment rights requires the challenged state election-law provision to be "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S., at 434; *Norman*, 502 U.S., at 289. But a "reasonable, nondiscriminatory restriction[]" triggers a "less exacting review," *Timmons*, 520 U.S., at 358, and will generally be upheld if "important regulatory interests" support the State's election-law provision. *Burdick*, 504 U.S., at 434; *Anderson*, 460 U.S., at 788 & n.9. In making these determinations, "[n]o bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *Timmons*, 520 U.S., at 358 (citing *Storer*, 415 U.S., at 730).

The Seventh Circuit correctly applied the ordinary-litigation test because Indiana's photo-ID requirement is a component of that State's comprehensive scheme controlling participation in the electoral process. *See, e.g.*, *McIntyre*, 514 U.S., at 345 (explaining that because Ohio's statute prohibiting the distribution of anonymous campaign literature was not an election-law provision that controlled the mechanics of the electoral process but, rather, was a regulation of pure speech, the ordinary-litigation test did not apply). Other components of that scheme include extensive voter-registration laws, *see, e.g.*, IND. CODE ANN. §§3-7-10-1 to -48-10, regulations governing polling places, *see, e.g.*, *id.*, §§3-11-8-7 to -8, -10.5, & -16 to -18, and laws on casting provisional ballots, *see, e.g.*, *id.*, §§3-11.7-1-2 to -6-3, to name but a few. Like these other components of the State's scheme, the photo-ID provision is a type of time-place-and-manner restriction subject to the ordinary-litigation test of the *Anderson-Burdick* line of cases. The question thus reduces to whether the Seventh Circuit correctly assessed Indiana's photo-ID requirement under that test.

III. INDIANA'S PHOTO-ID REQUIREMENT PASSES CONSTITUTIONAL MUSTER UNDER THE ORDINARY LITIGATION TEST.

A. Requiring Photo ID Imposes a Negligible Burden on the Right to Vote.

Application of the ordinary-litigation test to Indiana's photo-ID provision starts with an assessment of the "character and magnitude" of Petitioners' asserted injury to their right to vote under the First and Fourteenth Amendments. The Seventh Circuit correctly identified the extent of the burden on the right to vote when it observed that "[t]here is not a single plaintiff who intends not to

vote because of the new law—that is, who would vote were it not for the law," and that "the sponsors of this litigation" found no "such person to join as a plaintiff." *Crawford*, 472 F.3d, at 952. This fact suggests that the burden here has more to do with "the Democratic Party and other organizational plaintiffs [having] to work harder to get every last one of their supporters to the polls," than it does with any voters being actually disenfranchised. *Id.*

Petitioners have not met their burden of demonstrating a significant burden on the individual right to vote. And, even apart from the slight evidence proffered by Petitioners on this question, the empirical data contradict their claim.

Although the data are subject to competing interpretations, the research as a whole suggests that voter-ID laws do not have any significant dampening effect on voter turnout. The strongest support for Petitioners can be found in a "preliminary" study conducted for the U.S. Election Assistance Commission by Rutgers University's Eagleton Institute of Politics and the Moritz College of Law at Ohio State University ("Eagleton Study"). In that study, Professor Timothy Vercellotti conducted a statistical analysis of the effect of voter-ID requirements on voter turnout in each State and the District of Columbia during the 2004 election. *See* Report to the U.S. Election Assistance Comm'n on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002, Eagleton Inst. of Pols., Rutgers, The State Univ. of N.J., & Moritz College of Law, Ohio State Univ. (2006). Professor Vercellotti and David Anderson presented a new version of the analysis to the 2006 American Political Science Association conference. *See* Timothy Vercellotti & David Anderson, Paper

Presented at 2006 Ann. Meeting of Am. Pol. Sci. Ass'n, Philadelphia, Pa., Aug. 31-Sept. 3, 2006: "Protecting the Franchise, or Restricting It?: The Effects of Voter Identification Requirements on Turnout," http://moritzlaw.osu.edu/blogs/tokaji/voter%20id%20and%20turnout%20study.pdf. The Eagleton Study found that more stringent voter-ID requirements exerted some negative influence on turnout in the 2004 election. *See id.*, at 13. It determined that "[t]he overall effect for all registered voters was fairly small, but still statistically significant." *Id.*

Significant doubt, however, has been cast on the validity of the Eagleton Study's findings. *See* Jeffrey Milyo, Draft Policy Rep. for the Inst. of Pub. Pol'y in the Truman Sch. of Pub. Affairs, Univ. of Mo.: "The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis," at 6 (2007) [Milyo, "Effects of Photo ID on Voter Turnout"]. The methodology of the Eagleton Study has been criticized for its use of a one-tailed hypothesis test, instead of the more commonly accepted two-tailed test; for its misclassification of some 2004 voter ID laws; and for the inappropriate use of some variables. *See* David B. Muhlhausen & Keri Weber Sikich, A Report of the Heritage Center for Data Analysis, "New Analysis Shows Voter Identification Laws Do Not Reduce Turnout," at 6 (2007), http://www.heritage.org/Research/LegalIssues/upload/cda_07-04.pdf [Muhlhausen & Sikich, "Voter ID Laws Do Not Reduce Turnout"] (stating that Eagleton Study is "fatally flawed"). Particularly problematic is the Eagleton Study's use of the one-tailed test because it "allows researchers to double their chances of finding statistically significant results." *Id.*, at 2.

In 2007, a reanalysis of the Eagleton Study by David Muhlhausen and Keri Sikich of the Center for Data

Analysis at the Heritage Foundation ("Heritage Foundation Study"), using a two-tailed test, found "that voter identification requirements, such as requiring nonphoto and photo identification, have virtually no suppressive effect on reported voter turnout." *Id.*, at 21. The Heritage Foundation Study reported that when "[c]ontrolling for factors that influence voter turnout, states with stricter voter identification laws largely do not have the claimed negative impact on voter turnout when compared to states with more lenient voter identification laws," and that "minority respondents in states that required photo identification are just as likely to report voting as minority respondents from states that only required voters to say their name." *Id.*, at 22. Finally, the report also noted that "[w]hen statistically significant and negative relationships [were] found in [its] analysis, the effects [were] so small that the findings offer[ed] little policy significance." *Id.*

Another study by Professor John Lott of the State University of New York-Binghampton, Department of Economics ("Lott Study"), found that election regulations that can affect the cost of voting have no statistically significant negative impact on voter turnout. John R. Lott, Jr., Report: "Evidence of Voter Fraud and the Impact That Regulations to Reduce Fraud Have on Voter Participation Rates," at 11 (Rev. ed. 2006), http://www.vote.caltech.edu/VoterID/ssrn-id925611.pdf [Lott, "Voter Participation Rates"]. The Lott Study examined existing election regulations including nonphoto-ID laws that affected the cost of voting during the decade of 1996 to 2006, which although not as strict as mandatory photo-ID laws like those enacted in Indiana, Georgia, Missouri, and Florida, still made it more difficult for some people to vote. *See id.*, at 5. The study found that adopting a photo-ID

requirement "produced a drop in voter participation of 1.5 percent, a statistically insignificant change." *Id.*, at 7. And it found "only minimal support for the notion that IDs—whether photo IDs with substitution or non-photo IDs—reduce voting participation rates." *Id.*, at 8. But even more telling was its finding that nonphoto-ID requirements in areas identified as voter-fraud "hot spots" actually *increased* voting participation, supporting the hypothesis that "[g]reater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation." *Id.*, at 10; *see also id.*, at 4.

Yet another study examined the change in voter turnout across Indiana counties before and after the implementation of photo-ID requirements prior to the 2006 general election. Milyo, "Effects of Photo ID on Voter Turnout," at 1. The study concluded that overall statewide turnout increased by 2% from 2002 to 2006 and that no consistent evidence existed to support the theory that counties with higher percentages of minority, poor, elderly, or less-educated population suffered a reduction in voter turnout relative to other counties. *Id.*, at 2, 18-19. In fact, the only consistent and statistically significant impact of photo ID in Indiana was to increase voter turnout for counties with a higher percentage of Democrat voters. *Id.*

In February of 2007, Professor Stephen Ansolabehere presented a paper at the New York University Law School's Election Law Symposium for the Annual Survey of American Law. His paper presented the findings of a 2006 collaborative survey project among 37 universities involving a 36,500-person national sample survey conducted over the Internet, which included a battery of

questions to gauge election-day practices and a handful of questions probing the use of voter ID. Stephen Ansolabehere, Elting R. Morison Professor, Dep't of Pol. Sci., MIT, Paper Presented at N.Y.U. Ann. Surv. Am. L. Symp.: "Access Versus Integrity in Voter Identification Requirements," at 3 (2007), http://web.mit.edu/polisci/portl/cces/material/NYU_Identification1.pdf [Ansolabehere, "Access Versus Integrity in Voter ID Requirements"]. In looking at the rate at which voter-ID requirements excluded or prevented people from voting, the survey found "[o]nly 23 people in the entire 36,500 person sample said they were not allowed to vote because of voter identification requirements," which "translates into approximately one-tenth of one percent of voters." *Id.*, at 7. According to the researchers, "[t]he real lesson from the data is that the total number of people who said they were not allowed to vote because of voter identification requirements [was] trivially small." *Id.* These findings and others led the survey to conclude that "[v]oter identification is the controversy that isn't," and the fact "[t]hat almost no one is prevented from voting because of voter ID requirements casts doubt on arguments from the left that this amounts to a new poll tax or literacy test." *Id.*, at 9.

Despite studies like these that show no statistically significant negative effect on voters because of voter-ID requirements, opponents of voter ID still maintain that requiring in-person voters to establish their identity by presenting an accepted form of photo ID negatively impacts the ability of minorities, the elderly, the disabled, and the poor to vote. *See, e.g.*, Brennan Ctr. for Just. at N.Y.U. Sch. of Law & Spencer Overton, Response to Report of 2005 Comm'n on Fed. Election Reform 3 (2005), http://www.carterbakerdissent.com/final_carterbaker_re

buttal092005.pdf. These voters, the argument goes, are less likely to possess driver's licenses or other forms of acceptable photo ID. *Id.* Pointing to research showing that between 6 and 10% of voting-age Americans do not have a driver's license or a state-issued non-license photo ID, these critics argue that those numbers translate into approximately 20 million eligible voters. *Id.* They also argue that, in terms of both time and money, the costs of obtaining such identification would deter voting and likely cause lower voter turnout among poor voters and those who do not have easy access to government offices. *See* Task Force on Fed. Election Sys., John Mark Hansen, *Chap. VI: Verification of Identity*, 4 (2001), http://www.tcf.Lorg/publications/electionreform/ncfer/hansen_chap6_verification.pdf.

But these figures can be misleading. For several reasons, they substantially overstate the magnitude of any effect on voter turnout. First, long history unfortunately demonstrates that a significant number of eligible voters will choose not to vote, regardless of whether there is any photo-ID requirement. Lott, "Voter Participation Rates," at 3. Second, of those who do choose to vote, many of those currently lacking photo IDs will choose to obtain photo IDs if needed to vote. *Id.*; Muhlhausen & Sikich, "Voter ID Laws Do Not Reduce Turnout," at 5. And third, the critics' figures do not address whether those individuals without driver's licenses have other accepted forms of photo ID or may otherwise cast valid ballots via absentee voting or exceptions for indigency. *See* Muhlhausen & Sikich, "Voter ID Laws Do Not Reduce Turnout," at 5.[27]

27. Perhaps a better measure of the difficulty voters face in meeting the photo-ID requirement is the percent of registered voters who have driver's licences. Lott, "Voter Participation Rates," at 3. But even this measure fails to take into account that people who currently

In sum, there is no study or other empirical data that definitively supports the claim that a photo-ID requirement will result in significant voter self-disenfranchisement. *See* Milyo, "Effects of Photo ID on Voter Turnout," at 2, 18-19. And the balance of the data is to the contrary.

Nevertheless, even assuming *arguendo* that there exists some hypothetical set of voters who (i) would have voted without a photo-ID law, but (ii) will not vote because of the time and effort required to obtain a photo ID, Petitioners' claim nonetheless fails, for three reasons.

First, every regulation on voting necessarily imposes some burden on voters. *See Anderson*, 460 U.S., at 788; *Burdick*, 504 U.S., at 433. Requiring preregistration burdens voters, setting Election Day on a Tuesday burdens voters, fixing a limited number of polling places burdens voters, keeping the polls open principally during business hours burdens voters, and restricting who is eligible for absentee voting burdens voters.

> "In fact, all democracies in history have placed restrictions on the power to vote. In modern times, the United States and other democracies have gone much further than ever before, and almost entirely for the good, in expanding the franchise. But restrictions on voting remain. Even the concept of 'adult' is up for grabs—how old must one be? Sixteen? Eighteen? Twenty-one? And why only citizens, a somewhat arbitrary concept that itself can be influenced—and limited—by law?" Debate, Prof. Bradley A. Smith of

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lack a photo ID may get one once it is required. *Id.* Not to mention, this measure can be exaggerated because the lists of registered voters may not be updated to eliminate people who have died or changed addresses. *Id.*

Capital Univ. Sch. of Law & Prof. Edward B. Foley of Ohio State Univ., "Voter ID: What's at Stake?," 156 U. PA. L. REV. (PENNUMBRA) 241, 252 (2007), at http://www.pennumbra.com/debates/pdfs/voterid.pdf [Debate].

The point is that each restriction drives up the time and expense of exercising the franchise, and yet each of these regulations is undoubtedly constitutional. The requirement of photo ID is not qualitatively different.

Second, the requirement of a photo ID is becoming all but ubiquitous in the modern age. Photo IDs are required to drive a car; to board an airplane; to travel abroad; to enter many state and federal government buildings; to buy alcohol or cigarettes; to purchase firearms; to obtain a hunting or fishing license; to open a bank account; to purchase medical prescriptions; to obtain most health care or dental care; to rent a hotel room, a car, or a DVD from Blockbuster; and even to watch an R-rated movie at the cinema. *See Crawford*, 472 F.3d, at 951 (stating that "it is exceedingly difficult to maneuver in today's America without a photo ID . . . and as a consequence the vast majority of adults have such identification").

And *third*, and most critically, Indiana has ensured that voters without a photo ID can obtain one *without cost*. IND. CODE ANN. §9-24-16-10. This case would be altogether different—and might even present serious issues under the Twenty-Fourth Amendment—if the State were to require a photo ID for voting and then to charge a significant amount to obtain a photo ID. But, following the Carter-Baker Commission's express recommendation, Indiana has ensured that government-issued photo IDs can be obtained free of cost. *See* CARTER-BAKER COMM'N REP., at 20 (stating that concerns over voter-ID

requirements presenting a barrier to voting can be addressed in part by assuring that government-issued photo ID is available without expense to any citizen).

In every election, some voters undoubtedly choose to disenfranchise themselves because of the perceived inconvenience or burden of voting. That is a disappointing fact of life, and turnout suffers for it. *See* Debate, at 253 ("[Photo ID] may keep a small number from voting, but it is not quite the same as denying them the vote. Every restriction on voting will burden the franchise, and at each step some small number of voters may decide voting is not worth the effort."). But it is no answer to have no controls or such low standards that the entire electoral process is vulnerable to manipulation and fraud. If such were the case, the voters' faith in our elections would be considerably shaken. And "[l]ittle can undermine democracy more than a widespread belief among the people that elections are neither fair nor legitimate." CARTER-BAKER COMM'N REP., at 1.

Thus, both the empirical data and the practical realities demonstrated that any burden on voting caused by the Indiana statute is negligible.

B. Photo-ID Requirements Curtail Voting Fraud and Help to Promote Voter Confidence in the Electoral Process.

On the other side of the scale is the State's interests that have been put forward as justifications for the photo-ID requirement. *See Burdick*, 504 U.S., at 434; *Anderson*, 460 U.S., at 789. As the Seventh Circuit recognized, "the purpose of the [photo-ID law] is to reduce voting fraud, and voting fraud impairs the right of legitimate voters to vote by diluting their votes—dilution being recognized to

be an impairment of the right to vote." *Crawford*, 472 F.3d, at 952. Voting fraud compromises the integrity of the electoral process, and preserving the integrity of that process is indisputably a compelling state interest. *Purcell*, 127 S.Ct., at 7; *Eu*, 489 U.S., at 231. Concomitantly, fear of voting fraud can breed a lack of voter confidence in the integrity of the electoral process, driving honest voters away from the polls and breeding a distrust of government. *Id.*; *see* CARTER-BAKER COMM'N REP., at 18 ("The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."); Lott, "Voter Participation Rates," at 11 ("Regulations meant to prevent fraud can actually increase the voter participation rate[,]" especially "on turnout in counties where fraud is alleged to be rampant."). These interests are weighty and amply justify enactment of a photo-ID requirement.

Nevertheless, Petitioners question the legitimacy and strength of these interests, arguing that there is little or no evidence of voter-impersonation fraud, either in Indiana or about the country, that very few people have been convicted of illegal voting since 2002, and that claims of voting fraud are based largely on rumor, anecdote, and

speculation.[28] These claims are false, as has been demonstrated exhaustively in Part I, *supra*.

Moreover, unlike with many other forms of voting regulations, with photo-ID requirements the fundamental right to vote appears on both sides of the ledger: as a

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28. Petitioners place great reliance on the relative scarcity of criminal convictions for in-person voter fraud. *See* Pet'r Br. (07-025), at 43, 45, 48; Pet'r Br. (07-021), at 7. But other factors account for the difficulty of obtaining convictions in this area. Unsurprisingly, harried election officers often do not report incidents of voting impersonation and fraud, and law-enforcement officials frequently choose not to pursue such cases because they are not high on the D.A.'s priority list, are too onerous to prove, and are viewed as victimless crime that are treated leniently by judges and juries. *See, e.g.*, Sara Perkins, *Hidalgo County DA: Convictions Hard to Get in Voter Fraud Cases*, THE MONITOR, Aug. 4, 2007, http://www.themonitor.com/onset?id=4277&template=article.html.; Jennifer Liberto, *Vote Illegally, Get Caught: What Happens? Very Little*, ST. PETERSBURG TIMES, July 18, 2004, http://www.sptimes.com/2004/07/18/State/Vote_illegally__get_c.shtml; A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before S. Comm. on State Affairs, 80th Leg., R.S. (testimony of Skipper Wallace) ("[As a]n election worker, if you've ever worked as an election judge, you understand the hectic nature of the balloting process itself. It's very hurried, there are people waiting in lines. You want to move t'em through as fast as you can. You think this guy is impersonating somebody else but you don't have a lead pipe proof of stench, so you go ahead and let it ride. Well, then later you find out, well he did it. Well, you don't have any proof to be able go to a DA with to document that. There is a significant amount of evidence you have to take to actually prove up one of these cases—which makes it very difficult."). As the Seventh Circuit appropriately recognized, "the absence of prosecutions is explained by the endemic underenforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events) and by the extreme difficulty of apprehending a voter impersonator." *Crawford*, 472 F.3d, at 953. Indeed, this difficulty in obtaining convictions after the fact is yet another reason for the Indiana Legislature to have focused on preventing the crime *ex ante*.

potential cost, if eligible voters are in fact kept away from the polls, but also as a potential benefit, if increased voter confidence increases turnout and avoids dilution of legal votes. Thus, both the supporters and the detractors of photo ID often focus on the same broad concern—protecting against vote dilution.[29] On the one hand, "[e]xcluding [otherwise] qualified voters from the polls . . . eliminates those votes from the count[] and dilutes the value of others who voted for the same candidate or party."[30] On the other hand, ballots that are cast unlawfully "dilute the value of qualified votes."[31]

At the end of the day, regardless of whether there are a multitude of people in Indiana or elsewhere who have been convicted for voting fraud or voter impersonation, that does not impugn the legitimacy of the State's interests in preventing voter fraud. The State need not "make a particularized showing" of the existence of voter impersonation and "does not have the burden of demonstrating empirically the objective effects on [the electoral process] that were produced by" the photo-ID requirement. *See Munro*, 479 U.S., at 195. Requiring States to show substantial evidence of voter impersonation

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29. Ansolabehere, "Access Versus Integrity in Voter Identification Requirements," at 1.

30. *Id.*

31. *Id.*; *see also, e.g.*, 148 CONG. REC. S10488 (Oct. 16, 2002) ("[I]llegal votes dilute the value of legally cast votes—a kind of disenfranchisement no less serious than not being able to cast a ballot.") (statement of Sen. Bond); *id.*, at S2529 (Apr. 11, 2002) ("These twin goals—making it easier to vote and harder to corrupt our Federal elections system—underpin every provision of [the HAVA of 2002]. These goals are fundamental to ensuring that not only does every eligible American have an equal opportunity to vote and have that vote counted, but that the integrity of the results is unquestioned.") (statement of Sen. Dodd).

as a predicate to the imposition of reasonable photo-ID requirements would "invariably lead to endless court battles over the sufficiency of the 'evidence' marshaled by a State to prove the predicate" and would require "a State's political system sustain some level of damage before the legislature could take corrective action." *Id.* State legislatures are not required to do that; instead, they are permitted to respond to potential voting fraud "with foresight rather than reactively." *Id.*; *see also Timmons*, 520 U.S., at 364 (stating that there is no requirement of "elaborate, empirical verification of the weightiness of the State's asserted justifications"); *Ind. Democratic Party* v. *Rokita*, 458 F.Supp.2d 775, 826 (S.D. Ind. 2006) (same); *Weinschenk*, 203 S.W.3d, at 229 (Limbaugh, J., dissenting) (same); *cf. FCC* v. *Beach Commc'ns*, 508 U.S. 307, 315 (1993) (regarding rational-basis review of an equal-protection challenge: "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data").

C. The Substantial State Interests Outweigh the Slight Burden on Petitioners' Interests.

Given all that has already been said about burdens and interests, all that remains is to weigh the respective advantages and disadvantages. *Burdick*, 504 U.S., at 434; *Anderson*, 460 U.S., at 789. No bright line demarcates the boundary between a constitutional and unconstitutional election regulation, and this weighing is not susceptible of a "litmus-paper test," *Timmons*, 520 U.S., at 358; *Storer*, 415 U.S., at 730. No judgment will be "automatic," *Anderson*, 460 U.S., at 789, but when an election law "imposes only reasonable, nondiscriminatory restrictions" on the right to vote, "'the State's important regulatory

interests are generally sufficient to justify' the restrictions." *Burdick*, 504 U.S., at 434.

For the reasons given above, the burden on Petitioners' stated interest of voting in person without having to establish one's identity by presenting an accepted form of photographic likeness—and its purported effect of inducing eligible voters without ID to disenfranchise themselves—can only be characterized as negligible. Common sense and experience tell us that a government-issued photo ID is something that is readily available and easily obtainable. The fact that the vast majority of Indiana's registered voters, not to mention American adults, have one proves that. *See Ind. Democratic Party*, 458 F.Supp.2d, at 824.

Indeed, this commonsense balance is reflected in the widespread attitudes of American voters. For example, a Wall Street Journal/NBC poll in 2006 "found that 80% of voters favored a photo ID requirement, with 62% favoring it strongly. Only 7% were opposed."[32] Another poll similarly found that 82% of Americans, including 75% of Democrats, believe that "people should be required to show a driver's license or some other form of photo ID before they are allowed to vote."[33] And a recent survey found: (1) 95% of people who identify themselves as conservatives or as Republicans supported voter ID requirements; (2) slightly more than 70% of moderates and Independents expressed support; and (3) two-thirds of Democrats supported the idea, as did 60% of people who identified themselves as liberal and 50% who identified

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32. John Fund, *Jimmy Carter Is Right*, WALL ST. J., May 22, 2006, http://www.opinionjournal.com/diary/?id=110008411.

33. JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY 5, 136 (2004).

themselves as very liberal.[34] When respondents were categorized by race, the findings were that over 70% of Whites, Hispanics, and Blacks support the requirement, and Black and Hispanic voters did not express measurably less support for voter ID requirements than Whites.[35]

This popular consensus is also reflected in the recommendations of the Carter-Baker Commission, which explicitly urged the adoption of photo-ID legislation. Thus, Petitioners' stated fears that photo-ID requirements are merely cloaked attempts at voter suppression are belied by the fact that requiring a photo ID to vote was urged by, *inter alia*, former President Jimmy Carter—surely not a proponent of suppressing minority and Democratic votes.

Because the burden on Petitioners' rights is slight, the weight of the State's interests need not be overwhelming. Even so, here the State's interest is substantial. The photo-ID requirement is reasonable and nondiscriminatory. It is an evenhanded regulation that applies equally to all voters regardless of party affiliation or any suspect classification. To the extent that the indigent lack the means to pay for a photo ID, Indiana's law provides them with a government-issued ID card free of charge, IND. CODE ANN. §9-24-16-10, and others may vote absentee without having to show proof of ID, *id.* §3-11-10-1.2. Preventing in-person voting fraud is undeniably an important state interest. Indeed, the State's compelling interest in protecting the integrity of the electoral process could well satisfy strict scrutiny, and *a fortiori* it suffices under the "more flexible" test of

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34. Ansolabehere, "Access Versus Integrity in Voter ID Requirements," at 4-5.

35. *Id.*, at 5.

Burdick. Because Indiana's voter-ID law is a reasonable, nondiscriminatory measure directed at the important state interest of preventing voting fraud, it is more than sufficient to outweigh the slight interest of those who wish to vote in person without having to show a photo ID. Indiana's photo-ID requirement should be upheld.

CONCLUSION

The Court should affirm the judgment of the Seventh Circuit.

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